

1 BARRY M. HARTMAN  
2 Acting Assistant Attorney General  
3 Environment & Natural Resources Division  
4 U.S. Department of Justice  
5 Washington, D.C. 20530

6 WILLIAM A. WEINISCHKE  
7 Trial Attorney  
8 Environmental Enforcement Section  
9 Environment & Natural Resources Division  
10 United States Department of Justice  
11 P.O. Box 7611  
12 Ben Franklin Station  
13 Washington, D.C. 20044  
14 (202) 514-4592

15 LOURDES G. BAIRD  
16 United States Attorney  
17 LEON W. WEIDMAN  
18 Chief, Civil Division  
19 PETER HSIAO  
20 Assistant United States Attorney  
21 312 North Spring Street  
22 Los Angeles, California 90012  
23 Telephone: (213) 894-2474

24 NANCY J. MARVEL  
25 Regional Counsel  
26 MARCIA PRESTON  
Assistant Regional Counsel  
75 Hawthorne Street  
San Francisco, California 94105  
Telephone: (415) 744-1388

Attorneys for Plaintiff, United States of America

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, )

Plaintiff, )

v. )

LOCKHEED CORPORATION, )  
CITY OF BURBANK, CALIFORNIA, )  
a Charter City, and )  
WEBER AIRCRAFT, INC., )

Defendants. )

Civil Action No. 91-4527-MRP(Tx)

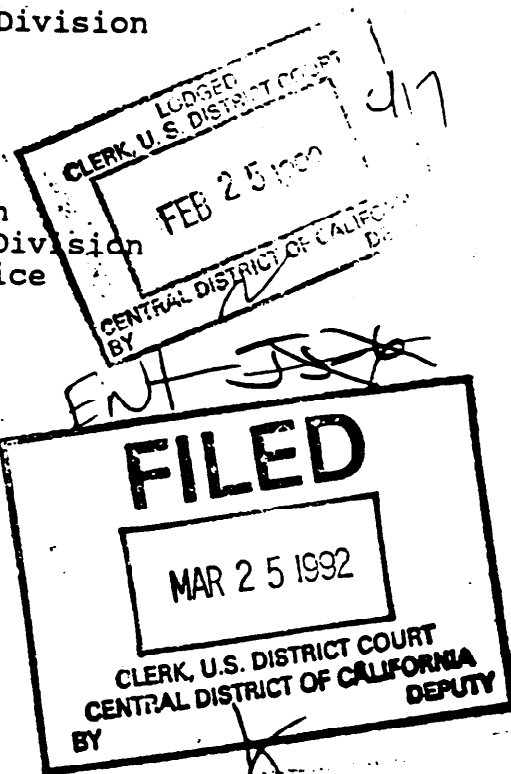
CONSENT DECREE

DOCKETED

MLD COPY PTYS

MLD NOTICE PTYS

N. JS-6



0040

14

1 BARRY M. HARTMAN  
2 Acting Assistant Attorney General  
3 Environment & Natural Resources Division  
4 U.S. Department of Justice  
5 Washington, D.C. 20530

6 WILLIAM A. WEINISCHKE  
7 Trial Attorney  
8 Environmental Enforcement Section  
9 Environment & Natural Resources Division  
10 United States Department of Justice  
11 P.O. Box 7611  
12 Ben Franklin Station  
13 Washington, D.C. 20044  
14 (202) 514-4592

15 LOURDES G. BAIRD  
16 United States Attorney

17 LEON W. WEIDMAN  
18 Chief, Civil Division

19 PETER HSIAO  
20 Assistant United States Attorney  
21 312 North Spring Street  
22 Los Angeles, California 90012  
23 Telephone: (213) 894-2474

24 NANCY J. MARVEL  
25 Regional Counsel  
26 MARCIA PRESTON  
Assistant Regional Counsel  
75 Hawthorne Street  
San Francisco, California 94105  
Telephone: (415) 744-1388

Attorneys for Plaintiff, United States of America

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
v. )  
)  
LOCKHEED CORPORATION, )  
CITY OF BURBANK, CALIFORNIA, )  
a Charter City, and )  
WEBER AIRCRAFT, INC., )  
)  
Defendants. )

Civil Action No.

CONSENT DECREE

**TABLE OF CONTENTS**

<b><u>SECTIONS</u></b>	<b><u>PAGE</u></b>
I. Definitions.....	3
II. Jurisdiction.....	9
III. Denial of Liability.....	9
IV. Site Background.....	10
V. Purpose.....	13
VI. Binding Effect.....	14
VII. Work To Be Performed.....	17
VIII. Quality Assurance.....	41
IX. Project Coordinators.....	44
X. Site Access.....	46
XI. Submission of Documents, Sampling and Analytic Data.....	54
XII. Financial Assurance and Trust Accounts .....	58
XIII. Compliance With Applicable Laws and Regulations...	63
XIV. Retention of Records.....	65
XV. Reimbursement of Past Costs.....	66
XVI. Reimbursement of Future Response Costs.....	67
XVII. Reservation and Waiver of Rights.....	69
XVIII. Covenant Not To Sue.....	75
XIX. Stipulated Penalties.....	82
XX. Dispute Resolution.....	95
XXI. Force Majeure.....	98
XXII. Contribution Protection.....	101
XXIII. Form of Notice.....	101

1	XXIV. Modification.....	103
2	XXV. Admissibility of Data.....	104
3	XXVI. Effective Date.....	104
4	XXVII. Community Relations.....	104
5	XXVIII. Public Participation.....	104
6	XXIX. Notice To The State.....	105
7	XXX. Consistency With The National Contingency Plan....	105
8	XXXI. Indemnification of the United States.....	105
9	XXXII. Other Claims.....	108
10	XXXIII. Continuing Jurisdiction.....	108
11	XXXIV. Termination and Satisfaction.....	108
12	XXXV. Section Headings.....	110

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

1        WHEREAS, the United States of America ("United States"), on  
2        behalf of the Administrator of the United States Environmental  
3        Protection Agency ("EPA"), has filed concurrently with this Con-  
4        sent Decree ("Consent Decree" or "Decree") a complaint in this  
5        matter pursuant to the Comprehensive Environmental Response, Com-  
6        pensation and Liability Act, 42 U.S.C. § 9601 et seq., as amended  
7        by the Superfund Amendments and Reauthorization Act of 1986, Pub.  
8        L. No. 99-499, 100 Stat. 1613 (1986) ("CERCLA"), seeking to com-  
9        pel the Defendants in this action to perform certain remedial ac-  
10       tions and to recover certain response costs that have been and  
11       will be incurred by the United States in response to alleged  
12       releases and threatened releases of hazardous substances from a  
13       facility as defined in Section 101(9) of CERCLA, 42 U.S.C. §  
14       9601(9), known as the Burbank Operable Unit Site ("the Site"),  
15       located in Burbank, California; and

16       WHEREAS, the Burbank Operable Unit Site is a part of the San  
17       Fernando Valley Superfund site #1 (also known as the North Hol-  
18       lywood Area Superfund site), which was listed on the National  
19       Priorities List ("NPL") in June of 1986, pursuant to CERCLA Sec-  
20       tion 105, 42 U.S.C. § 9605; and

21       WHEREAS, the United States alleges that the past, present,  
22       and/or potential migrations of "hazardous substances," as defined  
23       in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), from the Site  
24       constitute actual and/or threatened "releases," as defined in  
25       Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and further al-  
26       leges that the Lockheed Corporation ("Lockheed"), Weber Aircraft,  
27

1 Inc. ("Weber"), and the City of Burbank, California (the "City")  
2 are persons subject to liability under Section 107(a) of CERCLA,  
3 42 U.S.C. § 9607(a); and

4 WHEREAS, Lockheed, Weber and the City are persons, as  
5 defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21); and

6 WHEREAS, pursuant to Sections 121 and 122 of CERCLA, 42  
7 U.S.C. §§ 9621 and 9622, the United States, Lockheed, Weber and  
8 the City have stipulated and agreed to the making and entry of  
9 this Consent Decree prior to the taking of any testimony, and in  
10 settlement of the claims alleged against Lockheed, Weber and the  
11 City in the complaint; and

12 WHEREAS, the United States, Lockheed, Weber and the City  
13 have agreed upon a settlement pursuant to which Lockheed is  
14 obligated to fund and perform certain remedial work at the Site  
15 and to make payments to the United States, the City is obligated  
16 to fund and perform certain remedial work, and Weber is obligated  
17 to contribute to the funding of certain remedial work; and

18 WHEREAS, the United States, Lockheed, Weber and the City  
19 agree that the settlement of these claims is made in good faith  
20 and in an effort to avoid expensive and protracted litigation but  
21 without any admission or finding of liability or fault as to any  
22 allegation or matter;

23 NOW, THEREFORE, it is ORDERED, ADJUDGED, AND DECREED as fol-  
24 lows:

1 I. DEFINITIONS

2 A. "Burbank Well Field" or "Well Field" shall mean the area  
3 within the political boundaries of the City encompassing Burbank  
4 Public Service Department wells 6A, 7, 10, 11A, 12, 13A, 14A, 15,  
5 17 and 18, as shown on Appendix C. (This Appendix contains cor-  
6 rections to the well numbers shown in Figure 2 of the Explanation  
7 of Significant Differences ("ESD").

8 B. "Covered Matters" shall consist of any and all civil  
9 liability to the United States for causes of action arising under  
10 Sections 106 and 107(a) of CERCLA and Section 7003 of the  
11 Resource Conservation and Recovery Act ("RCRA") for performance  
12 of the Work; all Past Response Costs; and all Future Response  
13 Costs that are incurred by the United States and paid by Lockheed  
14 with respect to the Site prior to EPA's issuance of a Certificate  
15 of Completion pursuant to Section XXXIV (Termination and  
16 Satisfaction). Covered Matters specifically does not include  
17 performance of any Remedial Investigation/Feasibility Study  
18 ("RI/FS") other than that already completed for the Burbank  
19 Operable Unit; additional response actions that may be imple-  
20 mented pursuant to the final remedy or pursuant to any future  
21 Explanation(s) of Significant Difference (other than actions that  
22 Settling Work Defendants have agreed to perform pursuant to Sub-  
23 part F of Section VII (Work To Be Performed)), Record(s) of Deci-  
24 sion or Amendment(s) to any Record of Decision; costs or ac-  
25 tivities related to any operable unit other than the Burbank  
26 Operable Unit, including any future operable unit(s); any new en-  
27 vironmental condition which is identified in the Basinwide RI/FS

1 or of which the United States is unaware at this time; or any  
2 remedial actions that are necessary to implement the Record of  
3 Decision ("ROD"), as modified by the Explanation of Significant  
4 Differences ("ESD") and Subpart F of Section VII (Work To Be  
5 Performed), other than the Work. Covered Matters also does not  
6 include response costs incurred by the State of California, the  
7 California Hazardous Substance Account, and any of the State's  
8 agencies, representatives, contractors or subcontractors, unless  
9 these costs were reimbursed by EPA under a cooperative agreement.

10 C. "City" shall mean the City of Burbank, California, a  
11 charter city, and any of its divisions, departments and other  
12 subdivisions. "City" shall not include any joint powers  
13 authority of which the City of Burbank is a member.

14 D. "Day" shall mean a calendar day, unless expressly stated  
15 to be a working day; provided, however, that in computing any  
16 period of time under this Consent Decree, where the last day  
17 would fall on a Saturday, Sunday, or federal or State holiday,  
18 the period shall run until the close of business of the next  
19 working day.

20 E. "Environment" shall have the meaning set forth in CERCLA  
21 Section 101(8), 42 U.S.C. § 9601(8).

22 F. "EPA" shall mean the United States Environmental Protec-  
23 tion Agency.

24 G. "Explanation of Significant Differences" ("ESD") shall  
25 mean the document signed by the EPA Region IX Regional Ad-  
26 ministrator on November 21, 1990, attached as Appendix B and in-  
27 corporated herein by reference, which modifies the ROD.

1       H. "Fund" or "Superfund" shall mean the Hazardous Sub-  
2 stances Superfund, referenced in Section 111 of CERCLA, 42 U.S.C.  
3 § 9611.

4       I. "Future Response Costs" shall mean all costs including  
5 but not limited to all administrative, indirect, enforcement, in-  
6 vestigative, remedial, removal, oversight and monitoring costs  
7 incurred by the United States in connection with the Site pur-  
8 suant to CERCLA, subsequent to December 31, 1989 and prior to the  
9 termination of this Consent Decree, except that the term shall  
10 not include the costs of performing any RI/FS or the costs of im-  
11 plementing any future Record(s) of Decision, Explanation(s) of  
12 Significant Differences (other than an Explanation of Significant  
13 Differences setting forth the changes provided for in Subpart F  
14 of Section VII (Work To Be Performed) or Amendment(s) to  
15 Record(s) of Decision.

16       J. "Lockheed" shall mean the Lockheed Corporation, incor-  
17 porated in the state of Delaware, and any of its subsidiaries,  
18 parents, affiliates, predecessors and successors.

19       K. "Oversight Costs" shall mean all costs incurred by the  
20 United States in overseeing the Work and assessing the adequacy  
21 of the City's and Lockheed's performance pursuant to this Decree,  
22 including but not limited to the costs of reviewing or developing  
23 plans or reports.

1       L. "Past Response Costs" shall mean all costs, including  
2 but not limited to all administrative, indirect, enforcement, in-  
3 vestigative, remedial, removal, oversight and monitoring costs  
4 incurred by the United States in connection with the Site, prior  
5 to and including December 31, 1989.

6       M. "Point of Interconnection" shall mean the physical point  
7 of transfer of the treated groundwater after it goes through the  
8 booster station but before it enters the blending facilities.

9 For purposes of this Consent Decree, such transfer shall take  
10 place at the upstream flange of a water meter located on a  
11 pipeline between the booster station and the blending facilities  
12 and used to measure the quantity of water to be transferred, as  
13 depicted in Appendix E.

14       N. "Point of Delivery" shall mean the physical point of  
15 transfer of the treated groundwater from Lockheed to the City.  
16 For the purposes of this Consent Decree, such transfer shall take  
17 place at the downstream flange of a meter that is located between  
18 the groundwater Treatment Plant and the Valley Forebay Facility  
19 and is used to measure the quantity of water to be transferred,  
20 as depicted in Appendix E.

21       O. "Point of MWD Connection" shall mean the physical point  
22 of transfer of the Metropolitan Water District ("MWD") blending  
23 water from the MWD pipeline to the blending facilities. For the  
24 purposes of this Decree, such transfer shall take place at the  
25 downstream flange of a meter that is located between the MWD  
26 pipeline and the blending facilities and is used to measure the  
27 quantity of water to be transferred, as depicted in Appendix E.

1 P. "Point of Water System Introduction" shall mean the  
2 physical point of transfer of the blended water from the blending  
3 facilities to the City's public water supply distribution system.  
4 For the purposes of this Consent Decree, such transfer shall take  
5 place at the downstream flange of a valve located on the pipeline  
6 between the blending facilities and the City's public water  
7 supply distribution system, as depicted in Appendix E.

8 Q. "Record of Decision" ("ROD") shall mean the document  
9 signed on June 30, 1989, by the EPA Region IX Deputy Regional Ad-  
10 ministrator, acting for the Regional Administrator, attached  
11 hereto as Appendix A and incorporated herein by reference.

12 R. "Release" shall have the meaning set forth in CERCLA  
13 Section 101(22), 42 U.S.C. § 9601(22).

14 S. "Remedial Action Work" shall mean those activities  
15 (including all operation and maintenance required by this Consent  
16 Decree) to be undertaken by Settling Work Defendants to implement  
17 the final plans and specifications submitted by Settling Work  
18 Defendants pursuant to the Remedial Design Work Plan approved by  
19 EPA pursuant to Section VII (Work To Be Performed). The Remedial  
20 Action Work does not constitute all of the remedial action  
21 selected in the ROD (as modified by the ESD and Subpart F of Sec-  
22 tion VII (Work To Be Performed)).

23 T. "Remedial Design Work" shall mean the phase of the Work  
24 required by this Consent Decree wherein, consistent with the ROD  
25 (as modified by the ESD and Subpart F of Section VII (Work To Be  
26 Performed)), this Decree and the National Contingency Plan, 40  
27 C.F.R. Section 300 et. seq. ("NCP"), the engineering plans and

1 technical specifications are to be developed by Settling Work  
2 Defendants, for approval by EPA, and on which implementation of  
3 the Remedial Action Work shall be based.

4 U. "Settling Defendants" shall mean Lockheed, Weber and the  
5 City.

6 V. "Settling Parties" shall mean the United States of  
7 America, Lockheed, Weber and the City.

8 W. "Settling Work Defendants" shall mean Lockheed and the  
9 City.

10 X. "State" shall mean the State of California.

11 Y. "Statement of Work" shall mean the document containing  
12 EPA's best effort to provide a detailed description of the steps  
13 necessary to accomplish the Work, attached as Appendix D and in-  
14 corporated herein by reference, as it may be modified in accor-  
15 dance with Section XXIV (Modification).

16 Z. "Site" (when capitalized) or "Burbank Operable Unit  
17 Site" shall mean the areal extent of TCE and/or PCE groundwater  
18 contamination that is presently located in the vicinity of the  
19 Burbank Well Field and including any areas to which such  
20 groundwater contamination migrates.

21 AA. "System Operation Date" for each phase described in  
22 Subpart E of Section VII (Work To Be Performed) shall mean the  
23 first day on which Lockheed begins extracting and treating  
24 groundwater with the facilities constructed as part of the  
25 Remedial Action Work for that phase.

26 BB. "United States" shall mean the United States of  
27 America.